IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8111 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 3 : YES // 4 & 5 : NO

GSRTC

Versus

VAJABHAI D PARMAR

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2000

ORAL JUDGEMENT

In this matter, initially this Court, on 6th November, 1996, had issued notice making it returnable on 2nd December, 1996 and by way of ad-interim relief, stay in terms of paragraph 7 (2) of the petition has been granted on condition that the petitioner-Corporation shall deposit an amount of Rs. 25,000/= with this Court.

Thereafter, the ad-interim relief stood extended from time to time and ultimately, by an order dated 27th February, 1997, rule was issued making it returnable on 25th March, 1997.

2. The brief facts of the present case are that the respondent-workman is working as a Conductor with the petitioner-Gujarat State Road Transport Corporation [hereinafter referred to as, `the Corporation']. On 22nd September, 1988, when the respondent-workman was on duty in a bus on Indore-Ahmedabad route, his bus was checked by the Checking Squad of the petitioner-Corporation at Gunawat. The said place of checking is situated at a distance of about 40 kms. from Indore, on its way to Ahmedabad. During the course of checking, it was found that the respondent workman had collected fare from three passengers travelling from Indore to Dhar but the said passengers were not issued tickets nor an entry to that effect was made in the way-bill. On the basis of said allegations and misconduct, the chargesheet was served upon the respondent-workman and thereafter departmental inquiry was held against him, and subsequently he was dismissed from service on 4.2.1991. The said dismissal order was challenged by the respondent-workman before the Labour Court, Ahmedabad being Reference No. 2364 of 1991.

Before the Labour Court, the respondent-workman has not challenged the legality and validity of the departmental inquiry. Not only that either parties had not led any oral evidence before the Labour Court. Thereafter, the Labour Court has examined the merits of the matter while exercising powers under Sec. 11 (A) of the Industrial Disputes Act, 1947. The Labour Court has considered one aspect that in light of the misconduct committed by the respondent-workman, whether the punishment is proportionate or not. The Labour Court has considered thirty years' service of the respondent-workman and also considered unblamish past record; as the past record was not produced by the petitioner-Corporation. The Labour Court has also considered the fact that on 22-9-1988, the respondent-workman had collected fare and not issued tickets that allegation is on record found to be proved, considering the finding of the inquiry officer against the respondent-workman, and therefore, it is also a clear conclusion of the Labour Court that finding recorded by the Inquiry Officer is correct, legal and valid. Now, in absence of the past record available, the Labour Court considering the long service of 30 years of the respondent workman has treated it to be his first

misconduct and thereby held that the punishment of dismissal from service is apparently harsh, unjust and disproportionate to the misconduct alleged. Thus, the Labour Court has come to the conclusion that this is not a case of dishonesty and misappropriation because there was some delay in issuance of the tickets. The Labour Court has observed that from the evidence it is not clear that the respondent workman had misappropriated sum of Rs. 24/- by not issuing tickets to the three passengers but is it considered to be a negligence on this part. Therefore, considering all these aspects, the Labour Court has passed an Award directing the reinstatement of the workman in service with continuity and payment of 75% backwages for the interim period.

Mrs. Vasudatta Bhatt, learned advocate appearing for the petitioner-Corporation has pointed out that the facts are not in dispute that when the bus was checked by the Checking staff, it was found that three passengers were travelling from Indore to Dhar without ticket, though fare was collected by the respondent workman. Mrs. Bhatt further submitted that the Labour Court has considered the past record of the respondent workman, though Mrs. Bhatt fairly conceded the position that the past record was not produced before the Labour Court in reference. Not only that but no such averment has been made in the written statement by the petitioner-Corporation that looking to the past record, the punishment of the dismissal is proper. It is also required to be noted that the petitioner Corporation has not led any oral evidence before the labour Court. According to Mrs. Bhatt, the Labour Court has committed gross error in granting reinstatement with 75% backwages in a case where there is a clear finding on the record that the respondent workman has misappropriate sum of Rs. 24/= by not issuing tickets to the three passengers, and therefore, there is an error committed by the Labour Court which is apparent on the face of the record, and therefore, the Award is required to be set-aside.

Mrs. Bhatt submitted that though the past record of the respondent workman was not produced before the Labour Court, the same is now produced here in this petition wherein in all 23 defaults are shown to have been committed by the respondent workman in his service tenure of 30 years. Therefore, according to her submissions, now this Court can consider the past record of the respondent while examining the legality and validity of the Award in question.

On the other hand, learned advocate Shri

Brahmbhatt appearing on behalf of the respondent workman has submitted that the workman concerned had filed affidavit in reply in this matter wherein it is contended that the Labour Court has not committed any error either on law or on facts. It was submitted by the learned advocate that the Labour Court has considered the gravity and seriousness of the misconduct and come to the conclusion that at the most it amounts to negligence and there was no case of misappropriation, found to be proved against the respondent workman, and therefore, considering the long service tenure of 30 years of the respondent workman, while exercising the powers under Sec. 11 (A) of the Industrial Disputes Act, 1947, the Labour Court has exercised discretionary powers and had passed appropriate Award which does not require any interference at the hands of this Court, in exercise of powers under Art. 226 & 227 of the Constitution.

Mr. Brahmbhatt further argued that the petitioner Corporation has not produced the past record of the respondent before the Labour Court, and therefore, the Labour Court has rightly not considered the same. Now, the said past record has been produced before this Court with the present writ petition, the same cannot be now considered by this Court in exercise of the powers under Art. 226 & 227 of the Constitution. He further made submissions that in past, the respondent workman had not committed any serious misconduct and there was no case of misappropriation or dishonesty, and therefore also, the Award of the Labour Court is quite reasonable, just, proper and the same is not required to be dismissed.

I have considered the submissions made by both the learned counsel and have perused the entire award passed by the Labour Court as well as perused the past record Exh. 13 [Page Nos. 19 to 21]. It appears that when the bus was being checked, at that time, the respondent-workman was doing road booking and as a result, the way bill was not filled-in, therefore, in the entire bus, if only three passengers were found without tickets, then it would be reasonable to believe the defence of the respondent workman that he was doing road booking and the way bill was also not filled-in within the short distance. From the past record, it appears that in none of the incidents, there is a case of misappropriation or dishonesty. There are also defaults with regard to absenteeism. Against all these defaults, the respondent workman is already visited with punishment of imposition of fine to the tune of Rs. 2/=, 4/=, 5/=, and penalty of stoppage of one increment or so. Thus, it

appears that in past the respondent workman had not committed any serious misconduct in his service tenure of 30 years. It is an established principle that before passing the punishment order, it is the duty of the competent authority to consider certain relevant factors like socio-economic background of the workman concerned, family background, length of service, past record and compelling circumstances under which alleged misconduct was committed, and considering all these relevant factors the decision of punishment has to be taken. Therefore, considering all these aspects and the fact that during checking three passengers were found travelling without tickets and that respondent workman had recovered the fare amount of Rs. 24/= but not issued the tickets to these passengers, and also considering the defence of the workman concerned that there was no intention of misappropriation and there was no dishonesty on his part and that road booking was being made by him, it would be reasonable and in the interest of justice if the Award for payment of 75% of backwages for the interim period is reduced to 40% [forty percent] and some penalty as to stoppage of increment is imposed upon the respondent workman.

Accordingly, considering the facts and circumstances of the case, the Award dated 15th May, 1996 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 2364 of 1991 is hereby modified as under ;-

Petitioner-Gujarat State Road Transport Corporation is hereby directed to reinstate the respondent-Vajabhai D. Parmar with continuity of service with 40% {Forty per cent] backwages for the interim period and with stoppage of two increments with permanent effect.

In the result, this petition stands partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs. However, at the time of issuing notice and granting ad-interim stay, this court had directed the petitioner-Corporation to deposit a sum of Rs. 25,000/= in the registry of this Court. Now, the said amount of Rs. 25,000/= is directed to be paid to the respondent workman by an Account Payee Cheque. Registry is directed to make payment by verifying the identity of the respondent workman with the help of Shri J.S Brahmbhatt, learned advocate.

The petitioner-Corporation shall pay remaining amount of difference of 40% of the backwages for the interim period to the respondent workman by deducting sum

of Rs. 25,000/= which had been deposited in this Court within a period of four weeks from the date of receipt of certified copy of this order. If the respondent workman is not reinstated in service immediately then the respondent workman is entitled to full wages from the date of award ie., 15th May, 1996 till the date of his actual reinstatement and the said amount of full wages shall have to be paid within a period of six weeks from the date of service of the certified copy of this order. However, it is made clear that the petitioner-Corporation shall have to calculate the amount of 40% of the backwages as if the respondent workman was in service all throughout and considering his continuity in service for interim period and whatever the revision of wages has taken place.

Accordingly, this petition stands partly allowed.

[H.K Rathod, J.]

Prakash*